

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 02/03/2016
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2014-00461060-CU-NP-VTA
CASE TITLE: P.Q.L INC VS REVOLUTION LIGHTING TECHNOLOGIES INC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Demurrer (CLM) - to first amended complaint.
CAUSAL DOCUMENT/DATE FILED: Notice of Hearing, 12/31/2015

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you may submit a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-662-6712, stating that you submit on the tentative. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

The court's tentative ruling is as follows:

Grant moving Defendants' unopposed Request for Judicial Notice. Overrule Defendants' demurrer to the 3rd, 4th, 5th and 8th causes of action to the FAC.

Discussion:

3rd c/a (Intentional Interference with Prospective Economic Advantage)

The elements of the intentional interference with prospective economic are "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. [Citations.]" *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153.

While moving Defendants claim that Plaintiff has failed to allege their specific wrongful acts, non-fraud causes of action, such as this intentional interference cause of action, do not require heightened pleadings. See *Robinson Helicopter Co., Inc. v Dana Corp.* (2004) 34 Cal.4th 979, 993. A pleading need only allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn. 5. Accordingly, Plaintiffs are not required, as Defendants maintain, to identify in the FAC any of the 3rd parties who would derive a future benefit, or the names of customers or vendors/suppliers.

The elements of the 3rd c/a are sufficiently outlined in the FAC, ¶¶45-57; in particular as to element 1 see ¶¶46, 47, as to element 2 see ¶48, as to element 3 see ¶¶49-55 (specifically ¶54), as to element 4 see ¶56, and as to element 5 see ¶57. The moving Defendants are alleged to have been fully aware of and cooperated with defendant Fein's actions. While only RVLT was involved in the merger and acquisition discussions and signed the non-disclosure agreement, the FAC alleges that Seesmart is a wholly owned division or subsidiary of RVLT (¶3), as is Tri-State (¶11). And all defendants are alleged to have been acting with the permission and consent of the other defendants, and "collaborated

TENTATIVE RULINGS

and conspired with each other." FAC ¶¶13-14, 48. So, a contractual relationship between Plaintiff and moving Defendants is alleged, and all Defendants are alleged to have committed intentional acts.

The questions raised by moving Defendants in the Reply brief may be the proper subject of discovery, but do not require sustaining the demurrer. Facts sufficient to support the c/a have been alleged.

4th c/a (Common Law Unfair Competition)

The essence of the common law tort of unfair competition is "the inequitable pirating of the fruits of another's labor and then either 'palming off' those fruits as one's own (deception) or simply gaining from them an unearned commercial benefit." *KGB, Inc. v. Giannoulas* (1980) 104 CA3d 844, 850. See also *Bank of the West v. Sup.Ct. (Industrial Indem. Co.)* (1992) 2 C4th 1254, 1263, stating that the "common law tort of unfair competition is generally thought to be synonymous with the act of 'passing off' one's goods as those of another." From *United States Golf Assn. v. Arroyo Software Corp.* (1999) 69 Cal.App.4th 607, 618:

Common law misappropriation is one of a number of doctrines subsumed under the umbrella of unfair competition. It is normally invoked in an effort to protect something of value not otherwise covered by patent or copyright law, trade secret law, breach of confidential relationship, or some other form of unfair competition. [citations] The elements of a claim for misappropriation under California law consist of the following: (a) the plaintiff invested substantial time, skill or money in developing its property; (b) the defendant appropriated and used plaintiff's property at little or no cost to defendant; (c) the defendant's appropriation and use of the plaintiff's property was without the authorization or consent of the plaintiff; and (d) the plaintiff can establish that it has been injured by the defendant's conduct. [citations]

The FAC contains adequate allegations to support the c/a. ¶ 60 alleges that Defendants unfairly competed by misusing confidential and proprietary information, and poaching key employees, contractors, customers, vendors and suppliers. Defendants are alleged to have passed off Plaintiffs information and property as its own; exploiting the fruits of Plaintiff's labor.

Defendants argue that the 4th and 5th causes of action make the same allegations, but redundancy of a cause of action is not a ground on which a demurrer may be sustained. See *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858. There is no support for Defendants' argument that a common law unfair competition claim is preempted by a statutory claim of unfair competition.

5th (Bus. & Prof. Code §17200 Unfair Competition)

As stated in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320:

The UCL prohibits, and provides civil remedies for, unfair competition, which it defines as "any unlawful, unfair or fraudulent business act or practice." (§ 17200.) Its purpose "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (Kasky v. Nike, Inc. (2002) 27 Cal.4th 939, 949; see Hall v. Time Inc. (2008) 158 Cal.App.4th 847, 852.) In service of that purpose, the Legislature framed the UCL's substantive provisions in " 'broad, sweeping language' " (Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co. (1999) 20 Cal.4th 163, 181; see also Bank of the West v. Superior Court (1992) 2 Cal.4th 1254, 1266 ["The Legislature intended this 'sweeping language' to include ' anything that can properly be called a business practice and that at the same time is forbidden by law.' "]) and provided "courts with broad equitable powers to remedy violations."

Given the broad language, the allegations of the FAC properly plead a statutory unfair competition claim. Moving Defendants allege that the FAC contains only conclusions; however, a pleading only needs to allege the ultimate facts that constitute the cause of action, not the evidence by which the ultimate facts will be proved at the trial. *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551, fn. 5.

As to the FAC's request for an award of damages, a demurrer is not the proper procedure to strike the request.

8th c/a (Fraud)

The elements of a claim for fraudulent concealment require the plaintiff to show that: "(1) the defendant ... concealed or suppressed a material fact, (2) the defendant [was] under a duty to disclose the fact to the plaintiff, (3) the defendant ... intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff [was] unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613. The duty to disclose may be established where there is a confidential relationship between the parties, defendant has made a representation which was likely to mislead due to the nondisclosure, there is active concealment of undisclosed matters, or one party has sole knowledge of or access to material facts and knows such facts are not known to or discoverable by the other party. *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 346–347. See *Prakashpalan v. Engstrom, Lipscomb and Lack* (2014) 223 Cal.App.4th 1105, 1130.

While fraud causes of action must be pled with specificity, less specificity is required when the nature of the allegations mean that the defendants necessarily possess full information concerning the facts. See *Committee on Children's' Television, Inv. V. General Foods Corp.* (1983) 35 Cal.3d 197, 217.

Here, Plaintiff alleges that the Defendants conspired together, and concealed from Plaintiff their intention to execute a

plan to unfairly compete with PQL by poaching employees and taking confidential information. Because the allegations are that the Defendants destroyed and deleted the computer files containing the evidence, Plaintiffs allege that they are unable to plead the particulars of the concealed information. FAC ¶¶53 and ¶83. The timeframe alleged is from November 2013 to October 2014; during the parties' merger and acquisition negotiations. It is impossible, Plaintiffs allege, for them to know the when and where of each misrepresentation, the who (speaker or listener), or the what. Unlike *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, this is not a case where a false or incomplete statement is alleged. Rather, this is utter concealment. Plaintiffs allege that moving Defendants should have disclosed important facts to Plaintiffs, including its communications with Plaintiff's employees regarding their coordinated defection, and Fein's defamatory statements. While there is no good reason that the specifics of Fein's allegedly defamatory statements could not have been pled, there are other allegations of fraudulent concealment sufficient to support the cause of action. Plaintiff has alleged a duty to disclose based on a contractual relationship with RVLT, a relationship between all moving Defendants, and moving Defendants' accompanying fiduciary duty. ¶85. Whether those allegations are true, or supportable, is not for the Court to decide on demurrer.